

**Comments Received and Responses
on
State of Alaska Preliminary Decisions on
The Falls Creek Land Exchange, Hydroelectric
Project, and Related Actions**

FBRUARY 28, 2006

Prepared by the

**ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

Response to Comments on Falls Creek/Chilkoot
Trail Proposed Actions - February 28, 2006

Introduction

This document includes a summary and complete list of public and agency comments that were submitted timely on preliminary decisions, best interest findings and a preliminary report on State of Alaska actions concerning the Falls Creek Land Exchange and Hydroelectric Project. This report also includes responses to these comments. Documents that were commented on included:

- Preliminary Find and Decision Gustavus Electric Company Lease for Hydroelectric Project (ADL 107234)
- Report and Preliminary Best Interest Finding, Falls Creek Land Exchange (ADL 107326)
- Draft Finding Mineral Closing Order (MO 1044)
- Draft Northern Southeast Area Plan Amendment
- Draft Land Classification Order Amendment (SE-02-002AO1)
- Draft Chilkoot Trail Interagency Land Management Assignment Amendment #2 (ADL 65587)
- Preliminary Decision of Finding and Determination on Permit to Appropriate Water (LAS 22301)

The comments were received during a public review held in the winter of 2005/2006. Subsequent to the public review period, an Environmental Impact Statement and Order Issuing License were issued, and now all state decisions are being finalized. The responses in this document have been used to finalize State decisions and permits.

Summary of Public Comments

The public review of the draft State decision documents and exchange report consisted of a public review period ending February 2, 2006. Two public meetings were held during the review period. The first meeting was held in Gustavus on January 17, 2006 and the second public meeting was held in Skagway on January 18, 2006. Eleven people attended the Gustavus meeting and ten people attended the meeting in Skagway.

The State received 17 written comments by letter, fax, or e-mail. In the following pages, summaries of the comments are presented, along with an agency response. The comments and responses are organized into the following sections:

- Land Exchange
- Mineral Order
- State Lease
- Native Allotments
- Access
- Water Right Application

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Comments on the Exchange

Support/opposition to exchange

Summary of Comments on this issue: Support for the exchange was mixed. Of those who supported it, they based their support on the benefits of the hydroelectric project, more efficient land management, and support for the National Park Service owning part of the Chilkoot Trail. Of those who opposed the exchange, primary concerns included more restrictive management of that Chilkoot Trail under National Park Service management, more lands in the Skagway area in federal ownership, unknown “true costs” of the exchange, and conversion of the lands surrounding the two Native Allotments from Wilderness to state ownership.

Response: The Chilkoot Trail is already managed by the National Park Service under a 2002 Memorandum of Understanding between DNR and NPS. The public will see little change in management of the trail after the NPS assumes ownership of portions of the trail and adjacent lands. In addition, in response to the Skagway City Council’s concerns in December 2004, with exception of Unit D which is approximately 10 acres, DNR and the NPS deleted most of the lower sections of the trail (between Units A and E) from further exchange consideration.

FERC’s 2004 Final Environmental Impact Statement on the hydroelectric project and exchange went into great detail to consider the impacts of the proposed actions as required by the National Environmental Policy Act. In FERC’s 2004 Order Issuing License, the order found that the project proposal was in the public interest and satisfies the requirements of the Boundary Act. FERC found that the order was in the public interest because it provided for the development of a reliable supply of energy at a predictable price to serve a community that is not interconnected to a transmission grid.

As far as potential impacts on the two Native allotments when lands are converted from federal ownership / Wilderness designation to state ownership, there are multiple provisions in the Order Issuing License and the state lease that will minimize the impacts on the two allotments. These are described in other sections of this document. Three of the primary documents are the *Public Access and Recreation Plan*, *Road Management Plan* and the *Land Management Plan* developed by GEC and accepted by FERC. These documents contain measures to control vehicular access to the project area, management of lands adjacent to the project, location of trails, allowed recreation activities, and signage that would prevent trespass on the allotments. Drafts of these plans were submitted to the Hoonah Indian Association for review and comment before they were finalized and submitted to FERC for approval. As a result of the measures described above and the buffers between the allotments from the project lands, “reduce[reduction of] the allotments' value as secluded, peaceful, and natural sites” is unlikely.

Comments Received on the Exchange in General:

Support for exchange between NPS and DNR

Alaska Department of Fish and Game (ADF&G) staff has reviewed the proposed equal-value land exchange between the State of Alaska and the National Park Service (NPS), and the amendment to the Northern Southeast Area Plan and Classification Order (SE-01-02). The State will receive the surface and subsurface estate of 1,034 acres of federal land, known as the Falls Creek area of Glacier Bay National Park, in exchange for 1,040 acres of state land along the Chilkoot Trail within the Klondike Gold Rush National Historic Park. ADF&G is not opposed to this land exchange as described in the report and finding dated Dec. 15, 2005, but we do have several comments concerning the exchange. [Ellen Simpson, ADF&G]

In closing, I urge you to approve the proposed land exchange and land lease as soon as possible. [Marchbanks, Justin]

I am writing this letter in support of the Falls Creek Hydro Project at Gustavus, AK. I cannot tell you how much this project will help our community. I respectfully request your full support of the project. [Marchbanks, Kenneth]

Sealaska Corporation has reviewed the notice and supports the land exchange as proposed. It is to the interests of the State to trade away small properties that would be difficult to administer. [Michele Metz, Sealaska]

Oppose exchange between NPS and DNR

Please note my opposition to any exchange of land between the State of Alaska, DNR, and the National Park Service. In my opinion this cannot be good for our locality Skagway and Dyea, or anywhere in Alaska. The National Park Service should vacate the required lands in Gustavus with no compensation or exchange of lands, for the good of society. I am in favor of Gustavus going hydro electric power and the State of Alaska facilitating that. [Mark Schaefer]

Support Falls Creek land going to the State of Alaska

Simply stated, this potential exchange is a critical benefit to the community of Gustavus. As you may or may not be aware, the Denali Commission has recently dedicated \$2.5 million in grant funding for the Falls Creek Hydroelectric project. The land exchange is key to the completion of this project, which would allow Gustavus to no longer be totally dependent on diesel fuel for power generation. [Marchbanks, Justin]

Oppose Falls Creek land going to the State of Alaska

While the Hoonah Indian Association remains opposed to the exchange of federally protected Wilderness lands in Glacier Bay National Park and Preserve to the State of Alaska for the purpose of developing a privately owned utility, it appears clear that the decision to transfer Public Wilderness Lands adjacent to Falls Creek (Kahtaheena River) has been made. [Johanna Dybdahl, Hoonah Indian Association]

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The Hoonah Indian Association remains opposed to the transfer of these federally protected Wilderness lands adjacent to the Kahtaheena River and regrets that alternate solutions for providing the community of Gustavus with a clean, affordable source of electricity had not been more vigorously pursued. The true cost of these decisions may well be, yet realized. [Johanna Dybdahl, Hoonah Indian Association]

The Hoonah Indian Association remains opposed to the exchange of federally protected Wilderness lands in Glacier Bay National Park and Preserve for a variety of other reasons, as well. With the disappearance of the existing park buffer around the allotments, the allotments could be affected by uses on the new state land that would reduce the allotments' value as secluded, peaceful, and natural sites, in keeping with National Park Service purposes and values. [Johanna Dybdahl, Hoonah Indian Association]

We object to the land transfer. [Sophie McKinley on behalf of her mother Sophie McKinley, sole owner to the Charlie George Native Allotment]

Support Chilkoot Trail parcels being transferred to the National Park Service

As I am not a resident of the Skagway area, my knowledge of the lands proposed to be exchanged with the National Park Service is limited to the information presented at the Jan. 17 meeting in Gustavus. It would seem to me that NPS ownership and funding of the sites the State of AK would convey to NPS would be beneficial to residents as well as visitors of the Chilkoot Trail. [Marchbanks, Justin]

Oppose Chilkoot Trail parcels being transferred to the National Park Service

I am opposed to DNR releasing units A, B, C, D, and E of figure 1.3 to the National Park Service. Usable land in and around Skagway is scarce. Livable land and recreation is impeded by federal and state control of land in the area. [David Hunz]

The land surrounding the City of Skagway is being gobbled up by federal control which is restrictive in its use. A large portion of the land in Dyea is already under the control of the National Park Service limiting local opportunities in that area. DNR has proven that the desires of communities located adjacent to their lands do not take precedent over the income that can be derived from leases with private parties. The recent agreement with Alaska Mountain Guides over the desires of the community of Skagway, are an example of this. Perhaps the land currently used by the National Park Service for a camp ground could and should be leased out to a private party which would generate revenue for the state. [David Hunz]

Please don't let them [National Park Service] get control over this land that should belong to the locals and in city or state control. [Alice Ginny Sorrell]

Benefits of the Exchange

Summary of Comments on this issue: The Land Exchange Report and Preliminary Finding contained statements that made it look like a decision had already been made.

Response: These statements are not pre-decisional. They are included to inform the public and provide information that is required by statute. The Exchange Report stated that the proposed action “may be in the state’s best interest.” AS 38.50.130(a)(3) requires that land exchange reports include a discussion designed to facilitate public understanding of “the benefits and detriments which can be expected to accrue” to the state from an exchange. As required by the Boundary Act, FERC has conducted economic and environmental analyses under the Federal Power Act, the National Environmental Policy Act, and the Fish and Wildlife Coordination Act, which concluded, among other things, that the construction and operation of a hydroelectric power project on the exchange lands “can be accomplished in an economically feasible manner.”

The Boundary Act does not define the term “economically feasible.” The final EIS analyzed economic feasibility by comparing the cost of generation from the project over a 30-year period to the cost of equivalent generation from a diesel-fueled facility. In this analysis, which is based on standard utility ratemaking practices, the project was found to have a positive economic benefit if it costs less to construct and operate than equivalent diesel generation.

Comments received on this issue: Interestingly, in the Preliminary Report of the Falls Creek Exchange, dated December 15, 2005, the Acting Director of DNR Division of Mining Land and Water found that the proposed action may be in the state's best interest and that it, "...is hereby approved to proceed with public notice". However, in the Public Notice dated December 15, 2005, it states, "When completed, this project will supply the community of Gustavus with an affordable, clean, renewable source of electricity". While this public process is still in process, it appears that the final decision has already been made. [Johanna Dybdahl, Hoonah Indian Association]

City of Skagway’s Municipal Entitlement

Summary of Comments on this issue: Concerns were expressed about the City of Skagway not expeditiously receiving its municipal entitlement lands. The other concern was that the National Parks Service may block access to the Chilkoot Trail.

Response: The City of Skagway’s patent, requested in December 2005, is now going through automatic title processing by DNR Realty Services. The draft patent will be sent to the city shortly. This parcel encompasses approximately 932.9 acres in the Dyea area that the City of Skagway is entitled to under AS 29.65.010.

None of the lands that are being conveyed to the National Park Service are currently selected by the city. The city will receive the remainder of its entitlement (approximately 6000 acres) after it completes surveying the lands that DNR has already approved to the city (as required by state statute). There are provisions in the proposed quitclaim deed to NPS that ensure that the public will continue to have access to the Chilkoot Trail (an RS2477 Trail).

Comments received on this issue: The City of Skagway is concerned that it has not yet received all of its remaining entitlement [Skagway public hearing, Tim Bourey, Mayor, City of Skagway]

The City of Skagway is currently working with DNR in the selection of municipal entitlement lands. Until this process is complete, the land exchange between DNR and the National Park Service should not take place. [David Hunz]

DNR is withdrawing promised acres from the Skagway Entitlement Lands limiting the selections for the City of Skagway. The City must select another parcel of land. The land should first be made available to the City of Skagway for their selection or rejection. Once the National Park Service controls the land, the use would change from DNR-Northern Southeast Area Plan to much more restrictive federal regulations. If this occurs, the potential is there to block future access and development. The City of Skagway should have title to 100% of our selected lands before a transfer is made. [David Hunz]

Navigable Waters

Summary of Comments on this issue: See comment below.

Response: The revised conveyance descriptions in the Final Exchange Report and the Final Exchange Agreement have been revised to clearly reflect the fact that beds of navigable waterbodies will be retained in State ownership.

Comments received on this issue: ADF&G is concerned that the report does not clearly describe the navigable waters that occur within the parcels proposed to be conveyed to the NPS. The section describing navigable and public waters (page 9) should be clarified to explain that the State will retain ownership of the land beneath waters identified as meeting the criteria of navigable waters; both the March 4, 1983 BLM decision and the state regulatory definition of navigable waterways found in 11 AAC 51.035. The legal descriptions of Units A, B, C, D and, especially, Unit E, should include the phrase “all land above ordinary high water” in the descriptions of land being conveyed to the NPS, to further clarify the State’s intent to retain the beds of all navigable waterbodies. [Ellen Simpson, ADF&G]

Chilkoot Trail - RS2477

Summary of Comments on this issue: See comments below.

Response: The State of Alaska and the federal government disagree on this issue. RS2477 was a self-executing law and the state believes no further federal action is required. DNR can accept a right-of-way in one of two ways: a positive act of the territorial or state government or by documenting the acceptance by public user. In the case of the Chilkoot Trail, the RS 2477 casefile contains satisfactory evidence of its acceptance by construction and public use. The Chilkoot Trail is also listed in AS 19.30.400 as RST 592. The only way that the conveyance would not be subject to this right-of-way, would be for the state to go through a formal vacation process, which is a separate process that is not in the State's best interest at this time.

Comments received on this issue: We concur with the DNR decision to require that the conveyance of state land to the NPS be subject to the reservation of a public easement for the historic Chilkoot Trail, RST 592. [Ellen Simpson, ADF&G]

We are surprised and concerned that the State proposes to reserve a public access right-of-way on the Chilkoot Trail using RS2477. We have no objection to the State reserving such an easement, but we strenuously object to using RS2477 as the method to accomplish this. RS2477 is a highly controversial and uncertain method to reserve a public easement. While the state has recommend over 600 routes as "qualified" under state standards, that is only half of the equation. DNR's latest RS 2477 Fact Sheet recognizes that "only a handful of routes have been cooperatively validated in Alaska..." with the federal government. Validation requires consent from the federal government that a state's qualified route is, indeed, an RS 2477. The Chilkoot Trail RS 2477 assertion has not been adjudicated and without at final adjudication whereby the federal government also recognizes the Chilkoot Trail as an RS 2477, we fail to see how this 130 year-old law can be used to reserve a trail easement. [National Parks Conservation Association]

Regardless, we agree with and support the State's desire to ensure public access remains in perpetuity. However, as Klondike National Historical Park commemorates the historic Chilkoot "Trail" a trail easement seems the obvious choice. Designating the Chilkoot Trail as an RS2477 leaves open the possibility it could someday be a road - a highly controversial and inappropriate proposition. We strongly urge you to reserve the public access as a non-motorized trail easement, not an RS477. Furthermore, if the courts determine this route is not a valid RS2477, then the State is left with nothing, no easement of any kind. The safer, more logical, and non-controversial method is to simply reserve a non-motorized trail easement as part of the land exchange agreement. [National Parks Conservation Association]

Hunting

Summary of Comments on this issue: Concerns were raised that the lands conveyed to the NPS along the Chilkoot Trail will be closed to hunting, fishing and trapping. Concerns were expressed about additional hunting, trapping and ATV access on the Falls Creek land. Concerns were also expressed that there should not be significant restrictions on subsistence access on the Falls Creek land.

Response: The current Memorandum of Understanding between the State and NPS, allows the NPS to manage the Chilkoot Trail and adjacent State lands with the exception of hunting, fishing, and trapping and the possession of weapons. DNR and NPS purposefully deleted some of the lands under consideration for exchange along the lower Chilkoot Trail to address, in part, concerns about continued use of the area for these purposes. Hunting and trapping under NPS regulations are prohibited. Possession of firearms is restricted. Sport fishing, however, will continue to be allowed consistent with NPS regulations, although most fishable waters will be retained in State ownership. Furthermore, NPS regulations allow for transport of game that was harvested on non-NPS lands to be transported across NPS lands (this was a concern about NPS ownership of a segment of the lower Chilkoot Trail).

Under GEC's *Public Access and Recreation Plan* (which was approved by FERC), hunting, ground trapping and discharge of weapons will not be allowed on State lands within the hydroelectric "project area." These special restrictions do not apply to the remainder of the Falls Creek land after it is conveyed to the State. Hunting, trapping and fishing restrictions on the two Native allotments will remain unchanged and will continue to be prohibited without the owners' permission.

Access on the Falls Creek lands will be restricted by the two plans listed above, including access by ATVs within the project area. Because the new road and lands adjacent to it do not allow for vehicular access, with some exceptions, under the *Public Access and Recreation Plan* and *Road Management Plan*, it will be very difficult for the public to access the remainder of the state lands by motorized access because of terrain, vegetation, and private land ownership in and adjacent to the exchange lands.

Falls Creek lands that are conveyed to the State will be available for subsistence and other uses. Where as formerly, as part of Glacier Bay National Park Wilderness, uses for subsistence purposes were not allowed.

Comments received on this issue: Once the exchange is final, the parcels along the Chilkoot Trail would be closed to hunting. This should not greatly impact area residents, as hunters reportedly do not use these areas extensively. Skagway residents mostly target goats and hunt along Taiya Inlet or along the Denver Glacier. [Ellen Simpson, ADF&G]

The new state land could be opened for sport hunting and trapping and hunters would be able to roam freely, probably with ATVs. New dangers to life and property would be introduced within the National Park and the opportunity of future development of the

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Native allotments by their owners would be altered forever. [Johanna Dybdahl, Hoonah Indian Association]

There should not be a significant restriction of subsistence access either to traditional and/or cultural areas. [Sophie McKinley on behalf of her mother Sophie McKinley, sole owner to the Charlie George Native Allotment]

Questions were raised at the Skagway and Gustavus hearings about the change in hunting, fishing and trapping regulations when the lands are exchanged between the national park Service and the State.

Fish and wildlife habitat

Summary of Comments on this issue: Concerns were expressed about impacts to Fish and Wildlife Habitat and that the area should be designated for this purpose.

Response: The U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game has reviewed all proposed authorizations for the project and the exchange and have suggested numerous measures that would mitigate impacts on Fish, Wildlife and their habitats. Many of their proposed mitigating measures were put into the authorizations. In addition, the *Northern Southeast Area Plan* (2002) classified these lands Wildlife Habitat and Water Resources.

Comments received on this issue:

With regard to the land exchange, particularly the Falls Creek area, I have the following comments that I would like to enter into the public record:

- The Falls Creek area is active habitat for migratory birds, wildlife and fisheries.
- Of particular importance is that this land area hosts trumpeter swans, sand hill cranes, hawks, geese, ducks, American eagles - all requiring important resting areas on their migratory routes. This area is world renown and recognized by national environmental and wildlife organizations as important sanctuary for migratory birds. We request that this area be designated as protected habitat by the State Department of Fish and Game. Further, in this regard, there exists an abundance of moose, deer, bear, wolves, coyotes, fox, occasional wolverines, and smaller fur-bearing animals. Of importance, this area is a wildlife habitat corridor between the Excursion Inlet area and the Glacier Bay forelands. This corridor needs to be protected and needs to be free of development and have limited road access in order that the wildlife not be disturbed as they move throughout these areas. We request that the State Department of Fish and Game designate this corridor as protected habitat. [Thomas Mills]

Management of state land after the exchange

Summary of Comments on this issue: DNR could sell the Falls Creek land or convey it to the City of Gustavus who could then sell it. The land could be commercialized or otherwise degraded. Explicitly state the restrictions on state lands in the final decision on the exchange and in other authorizations.

Response: The *Northern Southeast Area Plan* (2002) classified the Falls Creek land Wildlife Habitat and Water Resources. These classifications preclude DNR from selling these lands. Statutes that apply to municipal entitlements do not allow municipalities to select lands outside their municipal boundaries. The Falls Creek lands are outside the City of Gustavus's boundary. Under GEC's *Public Access and Recreation Plan* and *Land Management Plan*, discharge of weapons within the project area will not be allowed. The additional restrictions on the future state lands have already been established through the FERC license, authorizations issued by the state, and the Northern Southeast Area Plan. The Department of Interior has also included FERC-related restrictions in the draft patent. Material sites are allowed by the lease and in the FERC license to support the construction and maintenance of the hydroelectric project.

Comments received on this issue: As developable land becomes scarce in Gustavus, pressure could be placed on the State of Alaska to make new Falls Creek state land available for sale or entry. As a municipality, Gustavus could get a portion of the land to dispose of for revenue purposes. Development of state or municipal lands would likely have adverse spillover effects on adjacent Native allotment lands. [Johanna Dybdahl, Hoonah Indian Association]

We do not want to see the lands transferred from Glacier Bay National Park and Preserve to state ownership resulting in a de-designation of the lands from wilderness status, which could drastically reduce the level of protection allowing development, such as rock pits, quarries which could degrade the water quality and quantity... Nor do we desire increased commercial development of the area if the transfer of land to the State of Alaska and the application of state land management policies... [Sophie McKinley on behalf of her mother Sophie McKinley, sole owner to the Charlie George Native Allotment]

It is extremely difficult for NPCA to see 1,000 acres of designated Wilderness in Glacier Bay National Park that contains pristine rainforest, wetlands, and tundra be declassified for a non-essential project. Therefore, it is vital to us that this land be developed only for the minimum necessary to run and operate the hydroelectric plant, with no peripheral uses such as logging, mining, ATVs or snowmobiles. We are very appreciative that when this area becomes State land it will be classified as Wildlife Habitat and Water Resources and managed primarily to protect habitat resources and to build the hydroelectric facility. It is our understanding it is not the intent of the State and highly unlikely that extractive industries or motorized recreation will ever occur on these lands. We are grateful for the many protections the State, FERC, and Gustavus Electric have put in place. Additionally, we would appreciate if these prohibitions could be explicitly stated in the land exchange

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and reiterated in future management documents to help educate the public and ensure the long-term protection of these State lands that were previously national park wilderness. [National Parks Conservation Association]

Management of NPS land after the exchange

Summary of Comments on this issue: Sealaska expressed concerns about protection of the old Dyea village site. Sorrell expressed concerns about additional restrictions on lands along the Chilkoot Trail when they are conveyed to the National Park Service.

Response: The National Park Service is aware of this site and the State has been assured that these sites will be protected once the lands are conveyed to the Service. There are currently stringent federal laws and state laws that protect such sites. The Service will have a more active on-the-ground management presence than the State, so the exchange should afford additional protection. Most of the lands along the Chilkoot Trail are already managed by the National Park Service under a 2002 Memorandum of Agreement with the State, so the public should see little change in management after the exchange is completed. A wide variety of public uses are currently permitted by the Service on park lands. Among these allowed uses are picnicking, horseback riding, the collection of fruits, berries, mushrooms for personal consumption, and the collection of dead wood for campfires to name but a few.

Comments received on this issue: In Figure 1.3 - Land along the Chilkoot Trail, in section 27, T27S, R59E, CRM, Sealaska has identified the Dyea village site as being used by the Tlingit Indians before being abandoned. Portions of this site or nearby old Native activities may overlap with Unit C. It is important that those administering the Chilkoot Gold Rush National Historical Park be aware that Native artifacts and items of archeological value may be in the immediate area. After the Interior Department assumes ownership, it is important that any such items found in the area be treated with respect and according to Department of Interior regulations and procedures. In addition, Sealaska Corporation and appropriate Tribes and Clans should be notified of any such discoveries. [Michele Metz, Sealaska]

I don't understand why the NPS wants to control the land at the trail head and along the river where so many people utilize it. The locals as well as tourists use this land every year for rafting, fishing, hiking and other fun things. Please don't let them get control over this land that should belong to the locals and in city or state control. Once the government gets their hands on things, all bets are off and strict rules and regulations begin to take place. Our government only sees things from their eyes in Washington. They don't live here. They don't grow up here. I have watched the Dyea Flats change over the past 35 years from a wonderful place to go play volleyball, have picnics, trail riding, horseback riding, mushroom picking and much more to a place with so many strict regulations that it can't be used by the locals as we did in the past. We cannot gather dead wood for fire wood or go get mushrooms or let our dogs run on the flats because of the strict government regulations from the NPS. It is not the fun place it was when I first moved here to get away from all that leucocratic red tape and restrictions.

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Please don't allow them to get their hands on any more land where we want to just hike and fish and enjoy ourselves. They change things from fun to STRICT RULES that are not fun for anyone. [Alice Ginny Sorrell]

Not only does the NPS stop us from mushroom picking with freedom and fun, but no longer can we gather already dead wood for fire wood or even drift wood to take home in our yards. Living in the bush made it fun once to live here. I would gather up my four children, take some wieners, marshmallows, potatoes, Kool-Aid (because we couldn't afford pop) and all go out to the flats to spend the day. We would gather up drift wood or old dead wood for fires, and while the fire was turning to coals we would beach comb or look for mushrooms. Sometimes we would ride our trail bikes around. We got excited about strange driftwood or unusual rocks or plants that we would gather up like treasures to take home. Now the wood has invisible labels on that says "sorry only to look at", while it slowly rots away with no use but to watch mulch collecting bugs and more bugs. Their strict rules and regulations have taken the fun out of why we moved here in the first place. When we came over 35 years ago, this was considered the 'Wilds of Alaska' or at least the BUSH, a free country where people can be themselves and enjoy our great outdoors and reap its harvest. After the NPS took over the Dyea flats, things have changed from enjoying the fruits of our land to only looking at it. How many of you have taken your dogs out for a run on the flats with no one around, only to be stopped by a Ranger in uniform to tell you the dog has to be on a leash at all times?. Have you tried to run with a big dog and keep up? Have you watched the joy go out of those loving, twinkling, loyal eyes when your best friend now has to heel by your side while on a leash, and keep your slow pace? (my pace has really slowed down since I have reached retirement age) My dog is extremely well trained and never runs away and still had to be put back in the truck or to put on a leash in the "so called" wilds of our own free land. His big sad eyes just look at me bewildered. And this was once a place where the locals would take their dogs to run. It is no longer freedom. The joy is gone. Yes the beauty is still there but you know that saying "Beauty is Only Skin Deep"?? Well it applies to land as well as people. Mushroom picking is limited because of restrictions and one of the mainstays of the locals was to go thru the creek where the tables used to be. We would play volley ball, build campfires, run our trail bikes, sometimes ski, fish or other such outings. Heck now we can't go thru there and it spoils all the fun of going thru the water to see the splashing off the side of the truck. Or better yet to have the thrill of just seeing if we can make it!! In the bush we find excitement in small things. What happened to the good old days when we had the freedom to roam our lands unhindered by policing and strict rules which sure put a damper on the great outdoors and enjoying ourselves? What happened to our freedoms? What is wrong with picking mushrooms, looking for driftwood, running our dogs, rock collecting, picking out little plants to take home to our rock gardens? We are a small community here and we have about half or less of the all year residents who lived here when we were a booming mining town. What has happened to us? / Fewer people but 10+ times the rules????/ [Alice Ginny Sorrell]

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Yes our industry is now only tourism but remember still "Beauty is only skin deep". True beauty is deeper and that is what brought us to this Great Land of Skagway. [Alice Ginny Sorrell]

Please consider this before you make up your mind to think about giving away our freedoms and serenity of what we call the Last Frontier. Too many Rules and Regulations take the Frontier right out of things. [Alice Ginny Sorrell]

Other issues

Summary of Comments on this issue: See comments below.

Response: Proposal to sell native allotment to a conservation trust: DNR has not proposed that the allotment(s) be sold to a land trust. This is a decision between the allottees, the land trust and BIA. Depreciated property values: The anticipated change in property values is speculative. The fact that the allotment is surrounded by state land might actually increase the value of the land. Chilkoot Trail parcel are actually within the City of Skagway: The suggested change has been made in the Final Exchange Report.

Comments received on this issue:

Conservation trust

We are not interested in any proposal to sell 100 acres of developmental rights for a conservation trust [Sophie McKinley on behalf of her mother Sophie McKinley, sole owner to the Charlie George Native Allotment]

Property values

We do not believe the value of our land would increase but rather decrease.decreased economic land value depreciation caused by such nuisances, noise, intrusion and risks. [Sophie McKinley on behalf of her mother Sophie McKinley, sole owner to the Charlie George Native Allotment]

Geographic location

In a letter from Richard Mylius date December 15, 2005, it states that the land exchange would occur 7 miles southwest of Skagway; however the land is actually situated within the City of Skagway boundaries. [David Hunz]

MINERAL ORDER

Summary of Comments on this issue: See comment below.

Response: The mineral order does, in fact, close these lands to mineral entry.

Comments received on this issue: With regard to Mineral Order - 1044, it would be appropriate to suspend the opportunity for any mining to occur on proposed transfer lands. [Johanna Dybdahl, Hoonah Indian Association]

COMMENTS ON THE STATE LAND LEASE

Support for the Lease

Summary of Comments: ADFG and Sealaska are not opposed to but support the lease.

Response: Thank you for your comment.

Comments received on this issue: Alaska Department of Fish and Game (ADF&G) ... is not opposed to this land lease as described in the Proposed Finding and Decision (PFD) dated Dec. 29, 2005.... [Ellen Simpson, ADF&G]

In addition, the Falls Creek hydroelectric project has been proposed as greatly benefiting Gustavus, not only because it will provide lower electric rates, but it will promote expansion that should provide a more stable economy for that community. [Michele Metz, Sealaska]

Opposition to the lease

Summary of Comments: The Hoonah Indian Association opposes the lease.

Response: See the *Comments on Falls Creek Land Exchange* section of this report (oppose/support subsection) for a responses on this issue.

Comments received on this issue: The Hoonah Indian Association is strongly opposed to the equal-value land exchange between the National Park Service and the State of Alaska involving lands near Gustavus at Falls Creek (Kahtaheena River). This exchange includes both surface and subsurface estates and would result in the State of Alaska acquiring lands upon which the Falls Creek Hydroelectric Project may be built. [Johanna Dybdahl, Hoonah Indian Association]

Public access easement

Summary of comments: The public access easement along Falls Creek described in the PFD states it extends 100 feet upland from the ordinary high water mark of the stream. The description should be clarified to include "along both banks of the stream". Also, an alternate access route should be provided if the public access along Falls Creek needs to

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be closed, and permanent closure should be allowed in the vicinity of the intake structure and powerhouse.

Response: It is the intent for the public access easement to run on both sides of the stream; language will be added to clarify this point. DNR concurs that alternative access should be provided during times of closure. DNR also concurs that, in order to protect public health and safety and maintain security, the access easement should be permanently closed at the sites of the intake structure and powerhouse as required for operation and use. DNR shall modify the language in the Access Section to provide for permanent closure and alternative access through closed areas.

Comments received on this issue:

Section IX of the PFD [Preliminary Finding and Decision] describes the public access easement along Falls Creek as “extending 100 feet upland from the ordinary high water mark of the stream.” The description should be clarified to include “along both banks of the stream”. In addition, an alternate access route should be provided if the public access along Falls Creek needs to be closed as the PFD [Preliminary Finding and Decision] states is a possibility. [Ellen Simpson, ADF&G]

Section IX Access, contains language which states that the bed of Falls Creek and extending 100 feet upland may be temporarily and intermittently closed for several reasons. It is suggested that language be added which would state that the streambed in the area of the intake structure, and some uplands in the area of the intake structure and powerhouse will be closed permanently. [Richard Levitt, Gustavus Electric Company]

Project boundary

Summary of comment: Why does the development plan show a project boundary line shown on private property outside of the edges of the road corridor?

Response: The State lease only encompasses the area within the FERC Project Boundary that falls on state lands. In this case, the term ‘Project Boundary’ refers to the Federal Energy Regulatory Commission’s (FERC) Project Boundary. According to the Gustavus Electric Company (GEC), Exhibit G-1 of the development plan mistakenly shows a 200 foot wide corridor along the road and transmission line route through private lands; however, the corridor on private lands should have been limited to only those lands necessary for safe and efficient operation and maintenance of the project. At the end of construction GEC is required by FERC to revise Exhibit G to show only the negotiated easements that cross private land.

Comments received on this issue: The last page of this document, Exhibit G-1, shows a PROJECT MAP of the proposed lease area (see enclosed copy). By agreement between GEC and the local land owners, GEC is to have use of a strip of land along the northern boundary of the southeast quarter of the northeast quarter of section 3. The width of this strip is to be suitable for a one lane road and an accompanying, buried high voltage cable.

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Why is a “PROJECT BOUNDARY” line shown outside of the edges of this GEC road? (See our red circle.) [Glen & Lorita Schrank]

DNR authorization type

Summary: Concern was expressed over Gustavus Electric Company (GEC) being charged for leasing the entire FERC-defined project area, when the facilities will only be constructed on a small portion of the project area.

Response: The Federal Energy Regulatory Commission (FERC) requires the licensee to obtain sufficient leasehold rights from the landowner to carry out the terms of the license. DNR has determined that a lease which covers all State lands within the project area is the appropriate vehicle to provide this interest. The lease will provide for exclusive use of the areas needed for the intake structure and powerhouse. In addition, the terms of the license require GEC to develop and manage the lease area in accordance with various plans, including a land management plan, a road management plan and a public access and recreation plan. Thus, it is recognized that over large portions of the lease area GEC is required to manage the lease area for limited yet non-exclusive uses. The State lease provides GEC with sufficient leasehold rights to carry out the terms of the FERC license.

Comments received on this issue: In Section I, Proposed Action, it is stated that GEC has requested an Upland Lease for the Hydroelectric Facility as described in Attachment A. What GEC actually applied for was an exclusive lease of land where the powerhouse and intake structure would be placed, and an access easement over lands where the access roads and FERC boundary would be. I am not familiar with the type of leases and easements DNR has available for the use of State lands, and perhaps a single lease is most appropriate to both of the above uses. However, the use and control of lands GEC would have in the above two scenarios would be quite different.

The area of the intake structure and the powerhouse would be fenced and off limits to the general public. This would be for the exclusive use of GEC only. This would encompass only several acres. All the rest of the FERC boundary, including the roads and pipeline corridor, would be open for public access for activities described in various FERC management and access plans.

These FERC plans were prepared with input from the general public, government agencies (including the ADNR), groups and individuals. The FERC plans which probably most affect this lease are article 416, Land Management Plan and Article 418, Access and Recreation Plan. How the public process was incorporated into these plans is contained in the final FERC approved plan.

How some activities are regulated, such as hunting and vehicle access, are determined by the public process and not by GEC alone. GEC may have input into the determination of an activity, but does not make the final decision. For instance, the decision to limit vehicular access was the wishes of the community of Gustavus, not GEC.

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If ADNR has only one type of lease for all the project boundary lands, then certainty the value to GEC of certain parts of these lands would be different depending on its use and degree of control of the land. This will be commented upon later. [Gustavus Electric Company]

Environmental Risk

Summary of comments: Gustavus Electric Company commented that there are other FERC plans in addition to the Fuel and Hazardous Substance Plan that address Environmental Risk.

Response: The additional FERC plans referenced further substantiate the finding that the environmental risk associated with this project is expected to be minimal.

Comments received on this issue: Section XI, Environmental Risk, mentions the Fuel and Hazardous Substance Plan. Other FERC plans which address environmental risk include The Construction Period Protection Plan, The Construction Period Environmental Protection Plan and The Erosion and Sediment Control Plan for the construction period, and The Environmental Compliance Monitoring Plan and other for the project operation period. [Gustavus Electric Company]

Performance guarantee and insurance

Summary: GEC expressed concerns about the requirement for performance guarantees and insurance for the life of the project

Response: Performance guaranties are means to assure performance and to provide ways to pay for corrective action if the use of the State land fails to comply with the requirements set forth in the authorization document. They are also used to protect State land from damage and to make certain the land is returned in a usable condition. Optionally, they may be used to ensure that the proposed project is completed as planned. All activities authorizing use of State land (except land sold by fee title, or use of land by other governmental agencies) require the consideration of performance guaranties and insurance before an authorization is issued.

Performance guaranties should equal the possible costs the State would incur to terminate an agreement authorizing use of State land, and return the land to a marketable and environmentally sound condition. They may optionally equal the amount necessary for the completion of a proposed project by a third party or the State; however, should this option be used, the performance guarantee amount should include not only that money that would complete the project but also the amount that it would take to terminate the agreement and remediate the project.

DNR has considered the GEC concern that a \$375,000.00 bond in place for the term of the lease may unreasonably burden the citizens of Gustavus with higher electricity costs, and believes there is an alternative way, more acceptable to GEC, that still satisfies the State's need for financial security. In order to ensure completion of the proposed project and execution of the lease agreement, GEC will be required to post a performance guarantee during the early entry permit period of the project. Once construction is complete, GEC will submit a completion report to DNR proving that the project was completed according to plan and without a major construction flaw. Upon DNR's approval of the report and issuance of the lease, DNR will release the performance guarantee. At that point the hydroelectric power will be constructed and operational and the value of the facility itself will provide reasonable guarantee of performance should GEC default on the lease agreement. In order to ensure site restoration, five years before the expiration of the lease the lessee will either apply to DNR for a new lease for the same site, or submit to DNR a site restoration plan to return the land to an environmentally sound condition and post a commensurate performance guarantee.

DNR has also re-evaluated the amount of the performance guarantee and reduced it to \$223,000.00. A significant portion of the performance guarantee was based upon the estimated cost of removing the entire quantity of gravel fill needed for road development. It has been determined that the process of reclaiming and restoring the site to an environmentally sound condition would not require removal and replacement of the entire amount of fill. Instead only a portion of the fill would have to be moved in order to properly reclaim the road and close out the lease. Hence, DNR has modified the bond amount accordingly.

There are multiple means in which to secure a performance guarantee and a surety bond is only one such means. Other alternatives include a certificate of deposit or a cash deposit submitted to the State of Alaska. Regardless of which means is chosen the State requires submittal of a performance guarantee as described herein.

Comments received on this issue: Section XIV Performance Guarantees and Insurance, require GEC to provide a \$375,000 performance guarantee bond. GEC has been advised by its insurance agent, Shattuck and Grummet of Juneau, Alaska, that it cannot find an insurance carrier for this bond. Ken Grummett cited the length of the term, 50 years and possibly 100 years as one factor. In addition, he stated that in recent years, insurance companies have been reluctant to issue these type of bonds.

GEC wishes to discuss with ADNR an alternative to providing these bonds. For example, it may be possible for GEC to offer the existing electrical capital plant as collateral or pledge revenue from the sale of electricity to pay for any corrective action. This would not cost ADNR any annual revenue, but would save the Gustavus electricity ratepayers the annual cost of a bond, or adding a \$375,000 cash bond to the cost of the hydro project, which would be added to the rate base. The addition of \$375,000 to the cost of the \$4,700,000 project would add 8% to the cost of the project. This would add a burden to the already high electrical rates in Gustavus.

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GEC has not been able to get a price quote on a performance guarantee bond, if it could even get one. Whatever that cost would be, however, would be added to the rate base and the cost of electricity.

GEC understands that the goal of lower electricity costs does not relieve it or the citizens of Gustavus of the responsibility to protect state lands. However, GEC requests that ADNR consider alternatives to the bond which would satisfy the State's concern and have minimal impact on electricity rates. Hydroelectric facilities in Juneau (and throughout the world) have been in operation for over a century. It is extremely rare that a hydroelectric facility is taken out of service. Article 400 of FERC's license mandates that GEC obtain a FERC approved finance plan before construction may commence. This is to insure that a partially, built project will not be abandoned. [Gustavus Electric Company]

Lease compensation

Summary: GEC expressed concerns about the rate annual lease compensation applying to the early entry period.

Response: As determined through the land exchange process, the lands being transferred to the State will be encumbered with a reservation for the Falls Creek Power Project. This federal reservation preempts State law by eliminating the State's ability to seek compensation for occupation or use of lands by the FERC licensed power project. Therefore no compensation can be charged for the lease, material or merchantable timber, and as a result there is no longer need for an appraisal.

Comments received on this issue: GEC does not disagree with the method of computing the annual rental rate, which is 8% of the land value. However, GEC disagrees with the initial value of the land for the early entry period. We agree with the value of \$1,102.00 per acre established by the 2005 federal appraisal. GEC would be willing to pay rent on land value double the above appraised value for the land which will have exclusive usage. However, GEC feels that the balance of the leased land within the FERC boundary is open to the general public, including all Alaska residents, and that the Gustavus ratepayer should not be burdened with lease payments on the full appraised value. This is discussed earlier in these comments under Section I, Proposed Action.

GEC requests that ADNR recalculate the annual lease payment during the early entry period to reflect a land value of \$2,204.00 for exclusive use area and a value of \$551.00 for the rest of the leased area. GEC is willing to discuss this with ADNR to negotiate a fair land value. GEC expects the appraiser to address this situation in the final lease. [Gustavus Electric Company]

Early entry permit

Summary: GEC expressed concerns that construction and development delays may not allow completion of the survey requirements in the 20 month term of the Temporary Entry and Use Authorization and requested a provision be provided so GEC would receive no penalties for such a delay.

Response: The standard early entry permit period of 20 months is based on the time necessary to complete survey and other requirements, with the assumption that that the construction and development will coincide. DNR understands that construction of this project will likely take more than the standard timeframe, therefore we will extend the early entry permit from 20 months to a 30 month period. DNR considers 30 months a reasonable time, even with potential delays, for GEC to complete the requirements of the early entry permit and enter into the lease agreement. The timelines and conditions for the early permit will be adjusted accordingly.

Comments received on this issue: The planned starting date for construction is April 1, 2006. One condition of GEC's FERC license is that no trees may be cut between May 1 and August 31. A starting date later than April 1 would make it likely that the access road would not be developed enough to have all the trees cut by May 1. This would stop all construction until September, which is the start of the rainy season. Excessive rain would stop construction, per the Erosion and Sediment Control Plan. Therefore, a late start would result in at least a 4 month delay if September, October and November are dry. A delay of a year would result if the Fall season was normal (rainy). A delay in the start of construction could be caused by delays in completion of the land exchange or in FERC approval of a finance plan.

According to GEC's approved Final Environmental Design Plan, the access road route will be selected by the Environmental Compliance Monitor as the road is being built, taking into consideration environmental, engineering and economic factors as the road progresses. Thus, the survey of the route would not be possible until the road is actually built. It is expected that the road would be built and the powerhouse and intake structure sites cleared and staked within four months of the start of construction, after which the field survey could start. GEC requests that ADNR adjust the time frame in Attachment "B" to account for the start of the field survey at the end of August 2006 and adjust the term of the early entry permit accordingly, if necessary.

GEC requests that provisions are included in the lease such that if the start of construction is delayed later than April 1, 2006, which could possibly result in a year's delay in completion of the road and start of the survey, there would be no penalty.
[Gustavus Electric Company]

Business structure

Summary: Gustavus Electric Company is a licensed public utility, not a licensed common carrier as stated in the preliminary decision.

Response: The error is noted. Changes will be incorporated to reference the applicant as a licensed public utility. Applicant still qualifies for a preference right under 38.05.810(e).

Comments received on this issue:

The first paragraph of page 12 describes the applicant as a licensed common carrier. This is an error. The applicant is a public utility regulated by the Regulatory Commission of Alaska (RCA). The applicant has been issued a Certificate of Public Convenience and Necessity by the RCA.

IMPACTS OF ACTIVITIES ON NATIVE ALLOTMENTS

Wilderness Protections Lost

Summary of Comments on this issue: The exchange will result in the two allotments being surrounded by state land rather than Wilderness and all the protections that come with this designation. Concerns include protecting “characteristics of sight, sound, solitude, and pristine resource integrity.”

Response: In the October 29, 2004 FERC Order Issuing License for the hydroelectric project, they concluded that the potential for adverse impacts to Native Allotments are minimal and required mitigation measures to further reduce the potential for harm. Furthermore, the Order made these mitigating measures a condition of authorizing the project. The costs of those measures were included in the economic analysis conducted by FERC.

Comments received on this issue:

In the case of the Falls Creek Hydroelectric Project, two Native allotment properties lie within the boundary of the proposed land exchange that is set to occur between the National Park Service and the State of Alaska. Project planning calls for the project powerhouse to be located right on the boundary of one of the allotments, just above where Falls Creek enters the allotment property. In fact, following the completion of the proposed land exchange, these two private Native allotment properties, once buffered by Glacier Bay National Park and Preserve, would be entirely surrounded by State land, without the protections that they once had, while adjacent to federally protected Wilderness. [Johanna Dybdahl, Hoonah Indian Association]

The Native allotment sites on Falls Creek were originally chosen with great care and purposeful intention, because of the natural water and habitat values that the Kahtaheena River (Falls Creek) provides for. The State's focus on the commercial development of this Wilderness River must not be given the opportunity to risk adversely spilling over on the adjacent allotments and their owners. [Johanna Dybdahl, Hoonah Indian Association]

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In fact, following the completion of the proposed land exchange, the two private Native allotment properties, once buffered by Glacier Bay National Park and Preserve, will be entirely surrounded by State land, without the protections once secure, as properties adjacent to federally protected Wilderness. While this action appears inevitable, despite our diligent efforts to intervene, the interest of our Native allotment holders and the integrity of their properties remain at the heart of the Hoonah Indian Association's ongoing efforts. [Johanna Dybdahl, Hoonah Indian Association]

With the disappearance of the existing park buffer around the allotments, the Hoonah Indian Association is concerned that the allotments could be affected by uses on the new state land that would reduce the allotments' value as secluded, peaceful, and natural sites, in keeping with National Park Service purposes and values. [Johanna Dybdahl, Hoonah Indian Association]

The precedent that this land exchange will set is, indeed, alarming to the Hoonah Indian Association because it demonstrates a casual disregard and loss of vision for the pristine integrity of the natural wilderness characteristics in the area of the Kahtaheena River; characteristics of sight, sound, solitude, and pristine resource integrity that are part of the allotments and available for those that will use and dwell on these family properties, now and in the long-range future. [Johanna Dybdahl, Hoonah Indian Association]

It is concerning to see that the only recommendation offered by the State of Alaska, with regard to the Native Allotments, contained in Sec. XVII of the Lease Proposal: Recommendation. [Johanna Dybdahl, Hoonah Indian Association]

Pursuant to AS 38.05.830, and after due consideration, the Department finds that the proposed lease is likely to have little to no effect on the density of the population in the immediate vicinity and that there is little potential for conflict with traditional uses of the land. If through public review of the preliminary finding, the department becomes aware of traditional uses with the potential for conflicts with the proposed use, the department will, if necessary, develop a plan to resolve or mitigate the conflicts. [Johanna Dybdahl, Hoonah Indian Association]

The Hoonah Indian Association would ask that the Division of Mining, Land and Water revisit the proposed lease as written, and give added consideration to developing recommendations, exclusive use agreements, and other measures, prior to the occurrence of any unanticipated conflicts that could adversely impact the Native allotments. [Johanna Dybdahl, Hoonah Indian Association]

Subsistence

Summary of Comments on this Issue: Concern was expressed that subsistence activities and resources would be diminished as a result of hydroelectric project and land exchange in the Falls Creek area.

Response: The FERC Order Issuing License for the hydroelectric project concluded that the potential for adverse impacts to Native Allotments are minimal and required mitigation measures as a condition of authorizing the project to further reduce the potential for harm. Furthermore, Falls Creek lands that are conveyed to the State will be available for subsistence activities where as formerly, as part of Glacier Bay National Park Wilderness, uses for subsistence purposes were not allowed.

Comments received on this issue: Our [Sophie McKinley on behalf of her mother Sophie McKinley, sole owner to the Charlie George Native Allotment] concerns regarding the Falls Creek Hydroelectric Project and Land Exchange are:

- Adverse impact, in any way, on any cultural and traditional resources within the immediate and surrounding area, including along all access and transportation routes associated with the proposed project
- It must not adversely impact, diminish, and or interfere with my family's protected subsistence activities and practices. These protected subsistence activities include fishing, hunting, and gathering subsistence resources with streams, lake waterways, shorelines, tidal areas and other available water and lands.
- The protection of these subsistence activities and resources requires protecting the environment and dependent extremely valuable habitat.
- Section 810 fails to thoroughly analyze impacts to subsistence uses in this study area and adjacent federal land areas. More time is needed to provide complete information to determine the potential impact on subsistence activities.
- The project should not proceed if it adversely degrades damages, deteriorates and destroys subsistence habitat and the surrounding water, air and environmental quality. Concerns are the effects on Fisheries stated on Draft EIS, 1-26 and Effects on Wildlife, page 1-27

Land ownership rights

Summary of Comments on this issue: Concern was expressed by allottees that the public notice indicated that the allotments were part of the exchange.

Response: Figure 1.2 in the public notice clearly stated, "Private lands (in blue) are not part of the exchange." Blue lines outlined both allotments. The legal descriptions of the lands proposed to be conveyed from NPS to the State also clearly did not include the U.S Surveys that described the two allotments. The excerpts from the public notice below that were cited were only indented to provide a general description of the character of the land and its general location. They are not legal descriptions, which were included elsewhere in the report. Additional clarification language will be added to the Final Decision that further indicates that the allotments are not part of the exchange.

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Comments received on this issue: What we are most concerned about is the language in the public notice that says that the Native allotments will be a part of the exchange. That needs to be clarified some how because that is an erroneous fact and has created quite a stir the native community. [Tom Mills and Robert Loescher]

Land ownership rights, whether private, Native Allotment, federal or state should not be negatively impacted by this proposed project. [Sophie McKinley on behalf of her mother Sophie McKinley, sole owner to the Charlie George Native Allotment]

We would like to draw your attention to page 4 of 13 of the **REPORT AND PRELIMINARY BEST INTEREST FINDINGS** ..., paragraphs 1, 2, and 3 excerpted as follows: [quoted sections from the Land Exchange Report]

Read together these paragraphs seem to identify the two (2) Native Allotments existing within the overall boundary of the land exchange tract. Our particular concern is the language.. "The State will also receive Lot 1.. ." and "These two parcels form a contiguous block of land..." this language read together gives the impression that the State of Alaska will in some manner or another receive title or ownership interests in the Native Allotment properties. If this is so, we advise the State of Alaska of our existing property interest and hereby advise the State of our objections to this intended taking of property without notice or due process of law. If, on the other hand, this is a mistake as we have been advised by Mr. Bruce Talbot of DNR Division of Mining, Land and Water - then we request that the public notice documents be amended and we request an apology for this oversight. [Thomas Mills]

View of powerhouse from cabin

Summary of Comments on this issue: See comment below.

Response: The powerhouse is obscured from the view of the property by dense tree cover and topography.

Comments received on this issue:

And finally, the land exchange provides property upon which the electric company will construct a hydro plant. The proposed hydro plant is located across the stream from our cabin and we hereby object to the placement of such a facility within the view plane of our property. We believe that we are entitled to an unobstructed view and certainly are entitled to a view that does not contain an industrial facility with surrounding lighting, equipment and supplies and anything that could impact the habitat area of birds, wildlife and the fish. [Thomas Mills]

ACCESS ISSUES

Trespass and ORVs

Summary of Comments on this issue: Concerns were expressed about trespass across Native allotments and use of motorized vehicles both on and off the project road.

Response: Three documents that address this issue are the *Public Access and Recreation Plan*, *Road Management Plan* and the *Land Management Plan* developed by GEC and accepted by FERC. Drafts of these plans were submitted to the Hoonah Indian Association for review and comment before they were finalized and submitted to FERC for approval. These documents contain measures to control vehicular access to the project area, management of lands adjacent to the project, location of trails, allowed recreation activities, and signage that would prevent trespass on the allotments. Specifically, the *Public Access and Recreation Plan* requires that “no trespassing signs” be posted around the boundaries of the two native allotments. In addition, trails and roads would not be built across the allotments. These plans address most of the access-related concerns expressed below. There are measures in the plans to prevent trespass and prevent vehicular access along the project road. Vehicles are allowed along the road only for particular purposes such as agency inspections and operation of the facility. The road will be gated and is generally not available for the public to use by motorized vehicles. These restrictions, combined with the rough terrain and thick vegetation in the Falls Creek exchange parcel, preclude the vehicular abuses that were put forth as concerns.

Comments received on this issue:

Unfortunately, many scenarios could present themselves, which would require the State of Alaska to turn to a plan if it became necessary to resolve or mitigate conflicts. Local ATV owners and others bringing in ATVs by boat, could start exploring the area, and begin establishing pioneer trails through the meadows and along the shoreline. Pedestrian use of the project roads could lead to establishment of trail routes from Gustavus to the “diversion structure”, on to the powerhouse and shoreline, and back to Gustavus. The last segment of such a “loop” could easily involve the trespass of Native allotment lands. During winter and times of adequate snow cover, snowmobiles would have easy access. Wildlife would be disturbed and trespass on Native allotment lands likely. [Johanna Dybdahl, Hoonah Indian Association]

Trespass on allotment lands could likely follow, with new ATV trails, litter, and illegal campsites a problem. [Johanna Dybdahl, Hoonah Indian Association]

Even if the Gustavus Electric Company could secure a state lease for exclusive use of the project roads by service vehicles, renegade ATV operators could easily go around or dismantle barriers and use the road and the pioneer trails that would branch off from the road, likely crossing Native allotment lands. GEC would have to post a 24-hour guard to prevent unauthorized use and the state would not have the manpower or resources to adequately enforce required safeguards and regulations. [Johanna Dybdahl, Hoonah Indian Association]

Local ATV owners and others bringing in ATVs by boat, could start exploring the area, and begin establishing pioneer trails through the meadows and along the shoreline. [Johanna Dybdahl, Hoonah Indian Association]

Pedestrian use of the project roads could lead to establishment of trail routes from Gustavus to the “diversion structure”, on to the powerhouse and shoreline, and back to Gustavus. The last segment of such a “loop” could easily involve the trespass of Native allotment lands. During winter and times of adequate snow cover, snowmobiles would have easy access. Wildlife would be disturbed and trespass on Native allotment lands likely. [Johanna Dybdahl, Hoonah Indian Association]

It would be appropriate for the State of Alaska to address its plans and strategy to protect the Native allotments against increased access by pedestrians, tourists, and other recreational users, hunters and trappers, and others by establishing strict regulations and mitigation measures similar to those employed by the National Park Service on the lands adjacent to the Native allotments now and not after conflict has occurred. [Johanna Dybdahl, Hoonah Indian Association]

We do not favor GEC proposing to leave the project access road open to (foot) traffic....The change in land status will result in increased access by recreational hunters, trappers, dogs, off-road vehicles. We do not desire increased access to our allotment... Concerns regarding: Landowners' nuisance (public and private), trespass, property damage, excessive traffic (and the associated health, environmental and safety risks).... the lowlands remain untrammelled, protection of our present and uplifted tidelands... Increased access caused by this proposed project should not interfere with the use and enjoyment of the property.... The proposed project will increase the use area by other subsistence users, sport hunters, trappers, recreational, off-road users. [Sophie McKinley on behalf of her mother Sophie McKinley, sole owner to the Charlie George Native Allotment]

We (native allotment #A-0442 and the supplemental native allotment (U.S. Survey # 11972 Alaska) do not want any Right of Way to cross our restricted deeded Native allotment.... We will require all permission for being on our allotment to be in writing. [Patrick Mills]

Of concern, is access by the public to the private Native Allotment properties? If access by the public is to be allowed to increase - then the State of Alaska should assist the private property owners in posting No Trespass and providing protection to the property owners from trespass by the public. [Thomas Mills]

Additionally, in this regard, the Native Allottees hereby request and give notice to the State their need to receive protection from trespass by the public in their access to the Falls Creek fish habitat. The stream runs through the Native Allotment and at this point no public easement exists for such access. [Thomas Mills]

We also want no more trespassing on our land at the mouth of Falls Creek. [Thomas Mills]

WATER APPLICATION AND RIVER ISSUES

Stream flow and fish habitat

Summary of Comments: The Hoonah Indian Association and allotment owners, are concerned about altering the river by withdrawing the water and putting it through the powerhouse and transfer pumps before returning it to the river. These include health concerns and concerns for the anadromous and resident fish. Concerns include adequate stream flows, agency and allottee consultation, and silting of the pool below the lower falls “thereby damaging or eliminating spawning habitat for fish.”

Response: Adequate stream flows would be provided for the survival of resident fish (Dolly Varden char) through a condition in the Permit to Appropriate Water (Water Right) that requires the Falls Creek Hydro Project (Project) to cease the diversion of water when stream flows in the bypass reach between the diversion dam and the return flow from the powerhouse tailrace are 5 cubic feet per second (CFS) or less during the period of 1 December through 31 March, and 7 CFS or less during the period of 1 April through 30 November. This water right condition would substantively mirror the instream flow condition in the Federal Energy Regulatory Commission (FERC) Hydropower License (License, Article 404), which is incorporated by reference in the Alaska Coastal Management Program (ACMP) Consistency Determination.

The flow rates and patterns in the portion of the Kahtaheena River flowing through the Mills Allotment will closely approximate natural flows, because the diverted project water will be returned to a point upstream from the allotment boundary after it flows through the power turbine, and because the project’s lack of reservoir storage capacity prevents it from significantly altering the stream’s natural flow pattern in the reach downstream from the return flow. The portion of the anadromous reach from the lower falls to the return flow point is a bedrock channel with poor anadromous habitat whose flow will be protected by the 5 CFS / 7 CFS bypass reach instream flow requirement.

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The only operational effects on flow through the anadromous reach downstream from the tailrace return flow are expected to be slight changes in water levels of up to 1 inch/hour, of short duration, during turbine flow adjustments to meet changing power demands. The water right would be conditioned to require the turbine to have an instantaneous flow continuation capability in the event of turbine shutdowns.

Siltation of the pool below the lower falls is not expected to occur because of erosion control measures required for the Project in the License, Article 410, which is incorporated by reference in the Alaska Coastal Management Program (ACMP) Consistency Determination. Furthermore, since the Project would not be physically capable of diverting more than 30 cubic feet per second, natural high flows capable of transporting sediments would continue to be experienced in the stream, preventing any persistent siltation of the pool below the lower falls.

Regarding agency consultation, ADNR/Water Resources adheres to Administrative Order No. 186 of 29 September 2000 regarding the State of Alaska's relationships with tribes on a government-to-government basis. We recognize the Hoonah Indian Association (HIA) as a tribal entity with interests in the Kahtaheena River area. We recognize our responsibility to include HIA in all of our notifications of water right actions required by statute or regulation. We welcome HIA's comments and would welcome opportunities for future consultation.

Comments received: The location where the water flows directly through one of the Native allotments, before discharging into Icy Passage, is a natural anadromous fish habitat that has been relied upon as a primary source of fresh drinking water and subsistence resources for many decades. It is home to a myriad of native plants and animals that exist in a complex system of natural habitats. These resources have been consumed by the allotment's occupants for generations. [Johanna Dybdahl, Hoonah Indian Association]

We request that the State Department of Fish and Game and the Alaska Department of Environmental Conservation examine the impact of taking water through a pipe 60m above the Falls Creek falls, avoiding the pool habitat below the falls and running water through a pipeline a distance of approximately three quarter miles down stream to a hydroelectric plant and then piping the water back into the stream. Our concern and objection is that this engineering design will lessen the available water into the pool below the falls and also cause an increase in silting of the pool below the falls thereby damaging or eliminating spawning habitat for fish. [Thomas Mills]

Full protection of the resident Dolly Varden in the log jam area in the bypass reach... [Sophie McKinley on behalf of her mother Sophie McKinley, sole owner to the Charlie George Native Allotment].

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The Hoonah Indian Association, in agreement with the allotment owners, remains concerned that altering the river, withdrawing the water and putting it through the powerhouse, and transfer pumps before returning it to the river, will degrade the pristine integrity of the Native properties by threatening the water quality and the many natural, water-related, resource interests of the Native allotment owners. These concerns include the concern for human health and our fears have not been resolved by evidence contained in the various environmental impact studies and mitigation plans. [Johanna Dybdahl, Hoonah Indian Association]

Health, water quality, and other water-related issues

Summary of Comments on river-related concerns: Concerns were expressed about human health, water quality, and other water-related interests of the HIA and allottees:

DNR Response: We understand this concern to be with water quality, which is not within the regulatory responsibility of ADNWR/Water Resources, but rather lies within the responsibility of the Alaska Department of Environmental Conservation. Water quality protection is also addressed in the FERC License.

Stream flows and accuracy of data

Summary of Comments on Stream Flows: See comment below.

Response: The US Geological Survey has monitored Kahtaheena River flow at two gage sites, and has published flow data for the periods of October 1998 through March 2001 for the lower gage below the lower falls, and for September 1999 through September 2004 for the upper gage above the upper falls. These flow records show that the mean or average of monthly streamflows at the lower gage site is less than 30 CFS during January, February, and March, and more than 30 CFS during the remaining months, ranging up to 114 CFS for June and 120 CFS for September. Daily mean flows have been measured as low as 10 CFS (on 29 March 2001) and as high as 1140 CFS (on 27 December 1999); 5.5 CFS was the lowest estimated daily mean flow (on 10 March 2000). Regardless, the Project would not result in loss of water to the Mills Allotment, since the Project would return all of its diverted water to the Kahtaheena River at the downstream extent of the bedrock channel, well upstream of the allotment boundary. The stream course through the allotment would experience flows undiminished and of essentially the same flow pattern as the natural flows.

Comments received on this issue: Do you know if 30 cubic feet per second flows in Falls Creek all the time? More? Is so, how much? Has anyone that is unbiased verified these figures about the water flow? Since our family feels that this loss of water from our native allotment #A-0442 and the supplemental native allotment (U.S. Survey # 11972 Alaska) will be detrimental to our family, we, the Mills family feel we have to oppose this water permit application. [Patrick Mills]

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